IN THE SUPREME COURT OF THE STATE OF DELAWARE

MILLARD E. PRICE,	§	
	§	No. 460, 2022
Plaintiff Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware
v.	§	
	§	C.A. No. N21C-05-160
CENTURION OF DELAWARE,	§	
LLC, CHRISTINE CLAUDIO,	§	
ANDREW ABRAHAMSON,	§	
JASVIR KAUR, and AMEGBO	§	
TAFFA,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: April 14, 2023
Decided: June 27, 2023

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

After consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Millard Price, filed this appeal from the Superior Court's November 15, 2022 order granting the appellees' motion for summary judgment. For the following reasons, we affirm the Superior Court's judgment.

(2) On May 20, 2021, Price filed a *pro se* complaint in the Superior Court against Centurion of Delaware, LLC, an entity providing medical services to inmates in the Delaware prison system, and four of its employees (together, the

"Defendants"), advancing three causes of action: deliberate indifference, intentional infliction of emotional distress, and medical malpractice. The Superior Court dismissed the medical malpractice claim after conducting its initial review as required by 10 *Del. C.* § 8803(b) because the claim was not supported by an affidavit of merit.

(3) In his complaint, Price, an inmate incarcerated at Howard R. Young Correctional Institution in Wilmington, alleged that the Defendants deliberately refused his repeated requests for pain medicine after an operation on his spine in June 2020. Following months of discovery, the Defendants filed a motion for summary judgment in September 2022. In support of their motion, the Defendants submitted Price's medical records, which showed that Price was frequently seen by the Defendants for his complaints of chronic pain after his surgery and before the filing of his complaint. The records also reflected that the Defendants refused Price's demand for a prescription for Tramadol, a prescription drug used for chronic ongoing pain, at the strength level that he desired. Price filed a brief in opposition to the Defendants' motion together with additional medical records that reflect that he has continued to be seen by the Defendants and other providers for his chronic pain since the filing of his complaint.

(4) On November 15, 2022, the Superior Court granted the Defendants' motion.[1] The Superior Court found that there were no material facts in dispute and that the individual defendants had not been deliberately indifferent to Price's medical needs. The Superior Court also concluded that "[b]ecause there was no Eighth Amendment violation on the part of the individual defendants, there can be no derivative violation by Centurion on a theory of either *respondeat superior* or vicarious liability."[2] Finally, the Superior Court found that there was no evidence that the Defendants' conduct "exceeded the bounds of decency"[3] and granted summary judgment on the intentional-infliction-of-emotional-distress claim. Price has appealed.

(5) We review the Superior Court's decision on a motion for summary judgment *de novo*, applying the same standard as the trial court.[4] That is, we must determine "whether the record shows that there is no genuine material issue of fact and the moving party is entitled to judgment as a matter of law."[5] When the evidence shows no genuine issues of material fact in dispute, the burden shifts to the nonmoving party to demonstrate that there are genuine issues of material fact that

---

[1] *Price v. Centurion of Delaware, LLC*, 2022 WL 16945692 (Del. Super. Ct. Nov. 15, 2022).
[2] *Id.* at *5.
[3] *See Goode v. Bayhealth Med. Ctr.*, 2007 WL 2050761, at *2 (Del. July 18, 2007) ("Outrageous behavior is conduct that exceeds the bounds of decency and is regarded as intolerable in a civilized community.").
[4] *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).
[5] *Id.* (internal quotation marks and citation omitted).

must be resolved at trial.[6] If there are material facts in dispute, the case must be submitted to the fact-finder to determine the disposition of the matter.[7]

(6) On appeal, Price argues that the Superior Court erred by granting the Defendants' motion for summary judgment because the Defendants failed to demonstrate that there were no genuine issues of material fact in dispute and the Superior Court had improperly shifted the burden to Price. Price also maintains that the Superior Court erred by finding that the Defendants did not act intentionally when denying Price's requested medical care. Finally, Price claims that the Superior Court's interlocutory orders limiting the scope of discovery warrant reversal.[8] Price's arguments are unavailing.[9]

(7) In order to prevail on a "deliberate indifference" constitutional claim, a plaintiff must make (i) a subjective showing that the defendant was deliberately indifferent to his medical needs and (ii) an objective showing that his medical needs were serious.[10] A medical need is "serious" if it has been diagnosed by a physician

---

[6] *Id*.
[7] *Id.*
[8] Because Price does not challenge the Superior Court's decision granting summary judgment in the Defendants' favor on the intentional-infliction-of-emotional-distress claim, he has waived any issue he could have raised on appeal with respect to that ruling. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).
[9] In his reply brief, Price argues for the first time that the Superior Court should have allowed him to amend his complaint to address any pleading deficiencies before it granted the Defendants' motion for summary judgment. By failing to raise this argument in his opening brief, Price has waived it. *Id.* In any event, Price did not file for leave to amend his complaint in the Superior Court. We will not consider an argument not raised in the trial court in the first instance. Del. Supr. Ct. R. 8.
[10] *Pearson v. Prison Health Serv.*, 850 F.3d 526, 534 (3d Cir. 2017).

as requiring treatment.[11] The Superior Court first concluded—rightly, in our view—that Price's need for pain-management treatment was serious.[12]

(8) The Superior Court next turned to the question of whether there was a genuine issue of material fact as to whether the Defendants had been deliberately indifferent to Price's need for pain-management treatment. The Superior Court correctly observed that "Price has no right to choose a specific form of medical treatment, so long as the treatment is reasonable."[13] Finding that the reasonableness of the treatment provided "is an issue that can be raised *only* through expert medical testimony," which Price had not supplied, the Superior Court found that there was no genuine issue of material fact about the reasonableness of the treatment provided by the Defendants.[14]

(9) The Third Circuit has opined that "medical expert testimony *may* be necessary to establish deliberate indifference in an adequacy of care claim where, as laymen, the jury would not be in a position to determine that the particular treatment or diagnosis fell below a professional standard of care."[15] But the Third Circuit ultimately held that a plaintiff may challenge the reasonableness of treatment

---

[11] *Id.* (internal quotation marks and citation omitted).
[12] *Price*, 2022 WL 16945692 at *4 ("Consistent with *Johnson* [v. *Connections Community Support Programs, Inc.*, 2018 WL 5044331 (Del. Oct. 16, 2018)], Price had already been diagnosed by a physician as needing pain management treatment.").
[13] *Id.* at *5 (internal quotation marks and citation omitted).
[14] *Id.* (emphasis added).
[15] *Pearson*, 850 F.3d at 536 (emphasis added).

through the proffer of *any* extrinsic proof.[16] Accordingly, although we disagree with the Superior Court's conclusion that Price was required to produce expert testimony to rebut the presumption that his medical treatment was reasonable, we nevertheless affirm the Superior Court's judgment on the independent and alternative basis[17] that Price did not offer any extrinsic proof challenging the reasonableness of his medical care.

(10) As a final comment on Price's deliberate-indifference claim, Price argues that the Defendants are refusing to prescribe Tramadol at the strength he seeks under a departmental policy and that the existence of such a policy in and of itself demonstrates that the Defendants acted with deliberate indifference to his pain-management needs. Price has not introduced any evidence of such a policy, and, more importantly, it is clear from Price's medical records that each individual defendant made his medical decisions regarding Price's care based on his professional judgment and taking into consideration Price's specific diagnoses.

(11) Price's third and final arguments on appeal concern the Superior Court's rulings on discovery matters. Specifically, Price claims that the Superior Court abused its discretion when it (i) denied his request for the appointment of a

[16] *Id.* ("[T]o the extent we agree with the District Court that a reasonable jury could not find in [the plaintiff's] favor on this record, we believe that it is additional extrinsic proof, rather than an expert witness specifically, that was required for him to survive summary judgment.").
[17] *Unitrin, Inc. v. American Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

third party to administer written depositions, (ii) denied his motions to compel, and (iii) granted the Defendants' motion for a protective order, which required Price to seek leave of court to file additional discovery requests. Price's claims are unavailing.

(12) We review pretrial discovery rulings for abuse of discretion.[18] When an act of judicial discretion is under review, "the reviewing court may not substitute its own notions of what is right for those of the trial judge, if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness."[19] And the trial judge has broad discretion to control scheduling as well as the Superior Court docket.[20] Viewed in its entirety, the record reflects that the limits the trial court placed on discovery—which were put in place only after the Defendants had answered Price's initial discovery requests and the court had resolved any related motions to compel or for rules to show cause—were neither arbitrary nor capricious.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

[18] *Phillips v. Wilks, Lukoff & Bracegirdle, LLC*, 2014 WL 4930693, at *4 (Del. Dec. 1, 2014).
[19] *Id.* (internal quotation marks and citation omitted).
[20] *Id.*